(3)

(1)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

Second Appeal No. 122 Of 2006.

APPELLANT :- Shri Balaji Swami, Shri Dudhadhari Math,
PLAINTIFF Registered Public Trust, Raipur, Through
Shri Rajshree Mahant Ramsunder Das,
Guru Shri Late Mahant Vaishnavdas.

P.R. No. 643 dated 28/3/16 Presented by Shri ... Advocate

V E R S U S

RESPONDENTS :- 1. Basant Kumar Sahu, aged 55 years,
DEFENDENTS resident of Near Station, Village
Abhanpur, District Raipur (C.G.),
2. State of Chhatttisgarh, Through Collector
Raipur, District Raipur (Chhattisgarh).

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APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

(14)

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO.122/2006

Shri Balaji Swami

Vs.

Basant Kumar Sahu and another

O R D E R

Post for 20.06.2006

Sd/-
Sunil Kumar Sinha
Judge

(15)

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO.122/2006

Shri Balaji Swami

Vs.

Basant Kumar Sahu and another

Appearance:

Shri Pankaj Agrawal, counsel for the Appellant.

ORDER
(20.6.2006)

SUNIL KUMAR SINHA, J

This is the plaintiff's second appeal, filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 31.01.2006 passed in Civil Appeal No.34-A/2005 by the District Judge, Raipur (C.G) arising out of Judgment and decree dated 11.7.2005 passed in Civil Suit No.2-A/2005 by the 8th Civil Judge, Class-I, Raipur. The plaintiff lost in both the courts.

(2) The brief facts are that the plaintiff, appellant herein, is a Registered Public Trust which has certain landed property in village Abhanpur P.C.No.132, Distt. Raipur. The plaint allegations are that in the month of Feb. 1995, 840 Sq.Ft. of land out of Khasra No.499/42 was encroached upon by the defendant, respondent no.1 herein, who raised construction of a house and Badi on the said plot. This gave rise to a cause of action to the plaintiff to file the suit for vacant possession of the land after removing superstructure raised upon it. The plaintiff also claimed mesne profit of Rs.600/- and it also claimed future mesne profit @ Rs.20/- per day from the date of institution of the suit till recovery of possession. The defendant no.1 filed his written statement of denial. He pleaded that he has not encroached upon any portion of the suit land. He also raised the ground that the suit is not filed by the competent person alongwith the grounds of valuation etc.

(3) The learned trial judge framed various issues in this case and after recording evidence came to conclusion that the plaintiff could not establish that defendant no.1 has encroached upon 840 sq.ft. of suit land belonging to the plaintiff. The suit was dismissed on this ground. This judgment and decree passed by the trial court was challenged in appeal. The appellate Court also held that the plaintiff could not prove his case by sufficient evidence to hold that any portion of suit land was encroached by defendant no.1 and ultimately the appeal was also dismissed. It is against this judgment and decree passed by the lower appellate Court, this second appeal has been filed before this court.

(4) Learned cousel for the appellant argued that the finding in relation to the factum of encroachment is not in accordance with law and the same is perverse on the face of record.

(5) I have gone through the records of the two courts below. To prove his case, the plaintiff has adduced evidence of one Dhandendra Sahu (P.W.2) who stated that defendant no.1 had encroached upon 840 sq.ft. of land belonging to the plaintiff. Another witness namely Prabhu Ram (P.W.1) who is the General Power of Attorney of the plaintiff also stated in the same fashion. Only these two witnesses have been examined by the plaintiff to prove its case. It is pertinent to note that no documentary evidence to establish the factum of encroachment has been brought on record and a vague and general oral evidence of above two witnesses have only been adduced. In the opinion of this Court, the trial Court as also the first appellate court has rightly held that the plaintiff could not establish that defendant no.1 has encroached upon any portion of the suit land belonging to it. In fact, this is a case of non-discharge of burden by the plaintiff. There appears to be no perversity in the concurrent finding recorded by the two courts below.

(6) No substantial question of law involves for consideration in this appeal. The appeal has no merits and the same is; dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge